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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

14 SAM ABBOUD,

15 Plaintiff,

16 v.

17 INTERNATIONAL BUSINESS MACHINES
18 CORPORATION, JOE SMYTH; JOHN DOE
19 #1; JOHN DOE #2; DOES 1-48,

20 Defendants.

Case No. C04-00017 JW

STIPULATION AND **PROPOSED**
ORDER MODIFYING SCHEDULING
ORDER

1 Based on the facts and circumstances set forth below, the parties hereby stipulate to
2 modify the scheduling order in this case as follows:

3 WHEREAS, a substantive discovery dispute arose between Plaintiff and a non-party and
4 required plaintiff to file a motion to compel testimony of witnesses of that third party;

5 WHEREAS, due to the time required to brief, hear and resolve the discovery dispute with
6 the Court, as well as the schedule of counsel for the third-party defendants, Plaintiff was unable
7 to schedule certain noticed depositions before the November 4, 2005 deadline previously set by
8 the Court's previous scheduling order;

9 WHEREAS, the parties believe that litigation efficiency will be increased by permitting
10 plaintiff to complete fact discovery prior to the parties exchanging expert-witness information
11 and filing dispositive motions;

12 WHEREAS, the parties participated in a mediation of the matter on October 26, 2005
13 and, consistent with their mediation discussions, currently continue to discuss the terms of a
14 possible settlement and believe that the interests of settlement will be advanced by permitting
15 them additional time in which to engage in such discussions; and

16 WHEREAS, the parties do not intend to seek any further modification of the scheduling
17 order.

18 IT IS HEREBY STIPULATED AS FOLLOWS:

19 1. Depositions of IBM and non-party witnesses noticed prior to September 14, 2005
20 (including those depositions that were the subject of plaintiff's motion to compel testimony from
21 Hitachi witnesses) will take place on or before December 9, 2005.

22 2. With the exception of the depositions referenced in paragraph 1, no additional
23 discovery may take place.

24 3. The deadlines for exchanging expert-witness information and filing dispositive
25 motions will be modified as follows to take into account the schedule set forth above:

26 a. The last day for hearing dispositive motions shall be January 23, 2006.

27 b. Any party wishing to present expert witness testimony with respect to a
28 claim or a defense shall lodge with the Court and serve on all other parties the name, address,

1 qualifications, resume and a written report that complies with Fed. R. Civ. P. 26(a)(2)(B) on or
2 before December 16, 2005.

3 c. Any party objecting to the qualifications or proposed testimony of an
4 expert must file, serve and notice a motion to exclude the expert or any portion of the expert's
5 testimony in writing in accordance with Civil Local Rule 7-2, for hearing no later than January 6,
6 2006.

7 d. If the testimony of the expert is intended solely to contradict or rebut
8 opinion testimony on the same subject matter identified by another party, the party proffering a
9 rebuttal expert shall make the disclosures required by Federal Rule of Civil Procedure
10 26(a)(2)(B) no later than January 16, 2005.

11 e. Expert discovery must be completed no later than February 3, 2006.

12 f. The attorneys who will try the case will confer with one another and file
13 and lodge with Chambers on March 6, 2006 a Preliminary Pretrial and Trial Setting Conference
14 Statement and Proposed Order.

15 g. The attorneys who will try the case will appear on March 20, 2006 at
16 11:00 a.m. for a Preliminary Pretrial and Trial Setting Conference.

17 The parties respectfully request that the Court adopt the above-referenced schedule, and
18 modify the Court's Scheduling Orders accordingly.

19
20 Dated: November 8, 2005

ROBERT DAVID BAKER, INC.

21 By: 
22 Robert David Baker
23 Attorneys for Plaintiff Sam Abboud

24 Dated: November 9, 2005

QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP

25
26 By: 
27 Scott G. Lawson
28 Attorneys for Defendant
International Business Machines Corporation

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: Nov. 09, 2005


JAMES WARE
United States District Judge